

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

APPELLANT PRO SE:

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ATTORNEYS FOR APPELLEE:

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Attorney General of Indiana

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Deputy Attorney General  
Indianapolis, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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DAVID E. LAUGHMAN,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 20A03-0607-CR-306

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APPEAL FROM THE ELKHART SUPERIOR COURT  
The Honorable David C. Bonfiglio, Judge  
Cause No. 20D06-0405-FC-390

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**October 31, 2006**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## Case Summary

David E. Laughman appeals the denial of his motion to correct erroneous sentence.

We affirm.

### Issues

We address two issues raised by the State:

- I. Whether Laughman's appeal is timely; and
- II. Whether a motion to correct sentence is an appropriate remedy for Laughman's claims.

Because the latter issue is dispositive, we do not address the three issues raised by Laughman.

### Facts and Procedural History<sup>1</sup>

On May 7, 2004, the State charged Laughman with three counts of class C felony non-support of a dependent child.<sup>2</sup> On November 10, 2004, Laughman pled guilty to all three counts pursuant to a plea agreement.<sup>3</sup> The plea agreement provided, *inter alia*, that Laughman receive a suspended aggregate sentence of ten years (three and one-third years for each count) and be placed on probation. On November 2, 2005, Laughman admitted that he

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<sup>1</sup> Laughman did not provide an appendix. We direct his attention to Indiana Appellate Rule 50(B), setting forth the requirements for appendices in criminal appeals. We thank the State for providing an appendix, containing the chronological case summary and the file-stamped notice of appeal, upon which our recitation of the facts and procedural history is based.

<sup>2</sup> See Ind. Code § 35-46-1-5 (“(a) A person who knowingly or intentionally fails to provide support to the person’s dependent child commits nonsupport of a child, a Class D felony. However, the offense is a Class C felony if the total amount of unpaid support that is due and owing for one (1) or more children is at least fifteen thousand dollars (\$15,000).”)

<sup>3</sup> In one entry, the chronological case summary states that Laughman was found guilty of four counts of non-support of dependent child. Appellee’s App. at 8 (Dec. 8, 2004). However, all other entries refer to three counts, and the State does not dispute that Laughman was convicted of three counts.

had violated his probation. As a result, the trial court revoked his probation and ordered the execution of the ten-year sentence.<sup>4</sup>

On March 20, 2006, Laughman filed a motion to correct erroneous sentence. On March 22, 2006, the trial court denied Laughman's motion. Appellee's App. at 12. Laughman's notice of appeal was filed with the trial court on April 21, 2006, and again on May 5, 2006. Appellee's App. at 11, 12.

## **Discussion and Decision**

### ***I. Timeliness of Appeal***

The State contends that Laughman's notice of appeal was not timely filed and must therefore be dismissed. An appeal is initiated when a notice of appeal is filed with the trial court clerk within thirty days after the entry of final judgment. Indiana Appellate Rule 9(A).<sup>5</sup> The timely filing of a notice of appeal is a jurisdictional prerequisite. *Becker v. State*, 719 N.E.2d 858, 860 (Ind. Ct. App. 1999). Failure to file a notice of appeal within the applicable time limits results in forfeiture of the appeal. *Id*; see also Ind. Criminal Rule 19 (stating that the notice of appeal must be filed within thirty days of the sentencing or within thirty days of the ruling on a motion to correct error, if one is filed, or the right to appeal will be forfeited). "A trial court's ruling on a motion to correct sentence is subject to appeal by normal appellate procedures." *Robinson v. State*, 805 N.E.2d 783, 786 (Ind. 2004).

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<sup>4</sup> The trial court recommended that Laughman be placed in the work release program, but he was not accepted.

<sup>5</sup> The State relies on *Greer v. State*, 685 N.E.2d 700 (Ind. 1997), which cites Indiana Appellate Rule 2(A), now Indiana Appellate Rule 9.

Essentially, the State argues that the trial court denied Laughman's motion on March 20, 2006, and thus the time to file an appeal expired on April 19, 2006. The State asserts that whether Laughman filed his appeal on either April 21 or May 5, 2006 is irrelevant because in either case Laughman filed his notice of appeal after April 19. However, the State ignores the May 5, 2006 entry in the chronological case summary, which, though noting that the May 5 filing was made more than thirty days after the trial court's denial of Laughman's motion, states: "Laughman previously filed appeal of the Court's 3/22/06 decision on 4/21/06. Transcripts are complete & preparation of record in process." Appellee's App. at 12. In this entry, initialed by the trial court, the correct date of the trial court's denial of Laughman's motion was entered, and the trial court determined that Laughman's April 21 notice of appeal was filed within thirty days of its denial. We therefore conclude that Laughman's notice of appeal was timely filed.<sup>6</sup>

## ***II. Appropriate Remedy***

The State also argues that a motion to correct sentence is not an appropriate remedy for Laughman's claims. The basis for a motion to correct erroneous sentence is Indiana Code Section 35-38-1-15, which provides:

If the convicted person is erroneously sentenced, the mistake does not render the sentence void. The sentence shall be corrected after written notice

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<sup>6</sup> Laughman asserts that pursuant to the so-called prison mailbox rule, his notice of appeal was timely filed, citing *Houston v. Lack*, 487 U.S. 266 (1998). In *Houston*, the U.S. Supreme Court held that "pro se prisoners' notices of appeal are 'filed' at the moment of delivery to prison authorities for forwarding to the district court." *Id.* at 266. Indiana has not squarely addressed whether the prison mailbox rule is applicable in state criminal cases. See *McGill v. Indiana Department of Correction*, 636 N.E.2d 199 (Ind. Ct. App. 1994) (analyzing the interaction between the interpretation of "incapacitated" under the Indiana Tort Claims Act and the reasoning articulated by the U.S. Supreme Court in support of the prison mailbox rule). Because the record establishes that the trial court denied Laughman's motion on March 22, 2006, we do not consider this issue.

is given to the convicted person. The convicted person and his counsel must be present when the corrected sentence is ordered. A motion to correct sentence must be in writing and supported by a memorandum of law specifically pointing out the defect in the original sentence.

The purpose of this statute “is to provide prompt, direct access to an uncomplicated legal process for correcting the occasional erroneous or illegal sentence.” *Robinson*, 805 N.E.2d at 785 (quoting *Gaddie v. State*, 566 N.E.2d 535, 537 (Ind. 1991)).

A motion to correct erroneous sentence is appropriate only when the sentence is erroneous on its face. *Id.* at 786. Use of the statutory motion to correct sentence is thus narrowly confined to claims apparent from the face of the sentencing judgment. *Id.* at 787. “Claims that require consideration of the proceedings before, during, or after trial may not be presented by way of a motion to correct sentence.” *Id.*

*Robinson* illustrates the types of claims that may be asserted by a motion to correct sentence. In *Robinson*, our supreme court held that a motion to correct sentence was appropriate where the defendant alleged that the trial court’s sentencing judgment omitted information that was required by statute, namely, credit time earned for time spent in confinement before sentencing. *Id.* at 788.

Laughman raises three issues in this appeal: whether the State lacked authority to charge him with multiple counts of non-support of a dependent child; whether his plea agreement was in violation of express statutory authority, rendering his conviction and sentences illegal; and whether his guilty plea was made knowingly, intelligently and voluntarily. All Laughman’s claims extend beyond the face of the sentencing judgment. While he claims that his sentence is illegal, he also tests the State’s authority to charge him

with and convict him of multiple counts. In addition, he challenges whether he voluntarily entered into the plea agreement. Therefore, a motion to correct sentence is not the appropriate remedy for Laughman's claims.

When claims of sentencing errors require consideration of matters outside the face of the sentencing judgment, they are best addressed promptly on direct appeal and thereafter via post-conviction relief proceedings where applicable. *Id.* Laughman pled guilty and his plea agreement specified the sentence to be imposed, leaving the trial court with no discretion as to his sentencing. A person who pleads guilty is not permitted to challenge the propriety of that conviction on direct appeal. *Collins v. State*, 817 N.E.2d 230, 231 (Ind. 2004). Laughman must proceed pursuant to Indiana Post-Conviction Rule 1.<sup>7</sup>

Affirmed.

BAKER, J., and VAIDIK, J., concur.

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<sup>7</sup> Indiana Post-Conviction Rule 1 provides:

(a) Any person who has been convicted of, or sentenced for, a crime by a court of this state, and who claims:

(1) that the conviction or the sentence was in violation of the Constitution of the United States or the constitution or laws of this state;

(2) that the court was without jurisdiction to impose sentence;

(3) that the sentence exceeds the maximum authorized by law, or is otherwise erroneous;

(4) that there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

(5) that his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint;

(6) that the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding, or remedy;

may institute at any time a proceeding under this Rule to secure relief.